



**Attorney General
Lee Fisher**

May 22, 1992

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Federal Communications Commission
Office of the Secretary

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Donna Searcy
Secretary, FCC
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 92-90
In the Matter of the Telephone Consumer Protection Action of 1991

Dear Ms. Searcy:

Enclosed for filing on behalf of the Public Utilities Commission of Ohio in CC Docket No. 92-90 are an original and five copies of our reply comments in this proceeding. An additional copy of comments is also enclosed. Please stamp and return same in the enclosed self-addressed stamped envelope.

Very truly yours,

A handwritten signature in cursive script, reading "Ann E. Henkener".

Ann E. Henkener
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, Ohio 43266-0573
(614) 466-4397

AEH/skm

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
The Telephone Consumer Protection) CC Docket No. 92-90
Act of 1991)
)

COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

The Public Utilities Commission of Ohio (PUCO) hereby
submits comments in response to the Notice of Proposed Rulemaking
in the above captioned docket.

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BACKGROUND

Federal Communications Commission
Office of the Secretary

The Federal Communications Commission (FCC) has requested
comments with regard to certain restrictions on the use of
autodialers in telemarketing, on unsolicited advertisements on
facsimile machines, and on telephone solicitation to residential
subscribers.

The PUCO recognizes that telemarketers may provide valuable
services and that future benefits may accrue to the public from
the availability of new and expanded services. However, there is
a growing problem with unscrupulous and intrusive telemarketing
practices. The PUCO is particularly concerned with the use and
abuse of autodialers.

The Consumer Services Department of the PUCO has documented a steady increase in the number of contacts it has with consumers regarding unsolicited telemarketing calls (Attachment A). Due to the fact that many telemarketing calls are interstate in nature and, therefore, not under the jurisdiction of the PUCO or other Ohio state agency, the PUCO supports the proposition that the issue of telephone solicitation and autodialers be addressed at the federal level.

The PUCO generally supports the intent of the FCC's proposed rules. The PUCO recommends, however, that the FCC consider several additions and modifications to its proposed rules, which are discussed below. The discussion follows the order of the issues as they are presented in the proposed rulemaking.

DISCUSSION

EXCEPTIONS TO PROHIBITED USES OF AUTODIALERS

Calls by tax exempt nonprofit organizations

The Telephone Consumer Protection Act of 1991 (TCPA) expressly excepts calls made by a live operator on behalf of a tax exempt nonprofit organization from the definition of "telephone solicitation". Autodialed calls made on behalf of a tax exempt, nonprofit organization, however, were not exempted from the Act. The PUCO recommends that the FCC not create an exception for tax exempt nonprofit organizations for autodialed calls.

If the TCPA intended an exception to the definition of "telephone solicitation" for autodialed calls by a tax exempt nonprofit organization, it would have so stated. The report of the Senate Committee on Commerce, Science, and Transportation on the Senate Bill (S. 1462) that preceded the TCPA states, "It is clear that automated telephone calls that deliver an artificial or prerecorded voice message are more of a nuisance and a greater intrusion of privacy than calls placed by a 'live' person." The Report further states that "it is legitimate and consistent with the Constitution to impose greater restrictions on automated calls than on calls placed by 'live' persons."

The PUCO believes that the clear intent of the TCPA, as evidenced both by the language of the Act itself as well as its legislative history, justifies not excepting autodialed calls from the restrictions proposed in the rulemaking.

Calls to former or existing clientele

The PUCO concurs with the FCC's tentative interpretation that a "business relationship" requires that a voluntary two-way communication must occur between the client and a business. This "business relationship" cannot be based solely on a prior solicitation from the caller to a consumer. The PUCO further recommends that for an "established business relationship" to exist that a transaction must have taken place between the parties within the last twelve months (i.e., a good or service purchased, donation to nonprofit organization made by called party, etc.).

The PUCO concurs with the FCC's interpretation that a "business relationship" exception would extend to debt collection agencies acting on behalf of the company holding the debt. However, we recommend that the FCC specify that the business relationship exemption does not give said debt collection agency the right to offer the called party any other good or service on its own behalf in the course of placing these calls. Additionally, these calls do not establish a "business relationship" vis-a-vis any future calls unrelated to the collection of a debt for a creditor.

Emergency autodialer calls

The PUCO concurs with the FCC's broad interpretation of the definition of "emergency" calls. The rules should make it clear that emergency calls are determined by their content and that an exception for emergency calls does not extend to non-emergency, autodialed calls placed to emergency telephone lines or the telephone line of a guest room of a health care facility. Additionally, the FCC should clarify that this exception should not extend to calls that would engage two or more lines of a business simultaneously.

Autodialer solicitations to businesses

The safeguards and restrictions in regard to residential telephone lines should be extended to business lines. In this context the PUCO can see no legitimate reason why businesses should enjoy a lesser degree of privacy than individuals. For residential subscribers the calls are primarily troublesome because they are invasions of privacy. For businesses, autodialer solicitations also result in lost productivity and, potentially, in lost customer contacts.

TECHNICAL AND PROCEDURAL STANDARDS

Artificial or Prerecorded Voice Systems

The PUCO recommends that the identity of the business or other entity should be stated at the beginning of the message. If there is a real person initiating the call, the identity of that person should also be stated at the beginning of the message.

TELEPHONE SOLICITATION TO RESIDENTIAL SUBSCRIBERS

The PUCO believes that the restrictions placed upon autodialers and automated voice systems should also be placed upon telemarketing calls involving live operators.

Regulatory Alternatives Available to Restrict Telephone Solicitation

The PUCO believes that individual states may find it effective to develop and maintain a "do not call" list and recover the costs of maintaining the lists through fees charged to intrastate telemarketers. The development of such "do not call" lists should be at the discretion of the individual states. The FCC should not preclude any state from developing and using "do not call" lists.

States may wish to compile these lists by area code (NPA) in the event that a telemarketer wishes to operate in only a portion of a given state. The PUCO also believes that quarterly updates to these lists would also be useful.

The PUCO further believes that it may be useful for the FCC to provide the mechanism to consolidate such state lists so that they are available nationally, and can be applied to interstate calls. It may be possible and appropriate to solicit the cooperation of The National Exchange Carrier Association in this regard. Because of its experience in maintaining a voluntary list on a national basis, it may be an efficient and low cost party to handle such a task.

The PUCO recommends that these "do not call" lists apply to all autodialed, non-emergency calls. The "do not call" lists should be honored in all cases except where an autodialed call is being used to transmit important information essential to consumers' immediate health and safety.

Special directory markings

The PUCO recognizes that directory markings may be beneficial to ensure that intrastate "do not call" provisions are followed. However, special directory markings may be less efficient for national telemarketers.

Industry-based or Company Specific Do Not Call Lists

The PUCO does not recommend that the FCC mandate industry-based or company specific do not call lists. FCC monitoring of compliance would be costly and difficult, if not impossible.

Time of Day Restrictions

The PUCO concurs with the recommended time restrictions of 9:00am to 9:00pm and further recommends that such restrictions be imposed at the federal level. A significant number of consumers contacting the Consumer Services Department of the PUCO cite the late hour of the telemarketing call as a reason for the complaint.

Additional Concerns

The PUCO requests that the Commission define "non-commercial", "express consent" and "business relationship" very narrowly. To define them liberally would be to defeat the purpose of the legislation and to ignore the frustrations of consumers.

CONCLUSION

The Ohio Commission believes that the benefits of the proposed rules to consumers far outweigh the costs, and will, in the long run, help the legitimate telemarketing industry to grow, diversify and flourish. The PUCO respectfully recommends that the FCC adopt the proposed rules with the modifications and suggestions contained in these comments.

Respectfully submitted,
Public Utilities Commission of Ohio

By its Attorneys:

Lee Fisher
Attorney General of Ohio

A handwritten signature in cursive script, reading "Ann E. Henkener", with a long horizontal flourish extending to the right.

James B. Gainer, Section Chief
Ann E. Henkener
Assistant Attorneys General

180 E. Broad Street
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Dated: May 26, 1992

Attachment A

Summary of Telemarketing Complaints and Inquiries

The increasing concerns of Ohio consumers regarding telemarketing calls is reflected in the number of contacts the PUCO's Consumer Services Department (CSD) receives on the issue. Many consumers, if not most, voice displeasure at the use of autodialers. For internal PUCO purposes, the telemarketing complaints the CSD receives are coded as solicitation complaints. During 1991 and the first quarter of 1992 CSD averaged approximately 100 solicitation complaints per month, second only to complaints concerning pay-per-call services. Additionally, it is important to note that many consumers, ostensibly contacting CSD to complain about 900 pay-per-call services, were solicited to call a 900 number by an autodialed telemarketing call they received. These complaints are coded for in-house purposes as "900" complaints but often involved autodialed telemarketing abuses.

CSD staff currently recommends registration with the Telephone Preference Service of the Direct Marketing Association for those telephone customers who wish not to receive telemarketing calls. It is our experience that registering with the DMA results in a minor reduction in the number of telemarketing calls received by consumers.